

EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: PROCESSED EGG PRODUCTS: MDL NO. 2002
ANTITRUST LITIGATION 08-MDL-02002

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PHILADELPHIA, PA

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OCTOBER 24, 2019

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BEFORE: THE HONORABLE GENE E.K. PRATTER, J.

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FINAL PRETRIAL CONFERENCE

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KATHLEEN FELDMAN, CSR, CRR, RPR, CM
Official Court Reporter
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(Transcript produced by mechanical shorthand via C.A.T.)

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1 jury box for sitting or your clients if they're going to be
2 here. Okay, so you work with Mr. Coyle.

3 All right, some more substantive or actual
4 law-related issues. There is an issue about asking what my
5 thoughts are on objections to deposition designations. You
6 don't have to say a word yet. I've just kind of teed up your
7 open questions. I would like to at least know, well, three,
8 but, at the least, two full business days what your objections
9 are to deposition designations. That's how much time in
10 advance I'd like to know. I don't want -- it was not rational
11 for it all before the trial started so I'm not going to do
12 that. But I do need at least two full days to kind of turn
13 that around. Obviously, I need the deposition, and if you can
14 give me the highlighted versions, that would be an act of
15 kindness.

16 Okay, now we've got summary exhibits that seems to
17 be now a big thing here. I need written -- as I understand,
18 the DAPs object to some of the Defense summaries, and if
19 that's true, I need to know what the written challenge is. I
20 don't have that yet I don't believe. If you want to challenge
21 them as a defense summary as some kind of supplement to the
22 Walker expert report, then I suppose I should listen to the
23 defense explanation as to why it isn't that and why it's a
24 straight 1006 summary, okay?

25 There is an objection from the Defense about

1 somebody named Kristin or Kirsten Flanagan. Who is Ms.
2 Flanagan?

3 MR. BLECHMAN: Your Honor, she's the summary
4 witness.

5 THE COURT: I understand that part.

6 MR. BLECHMAN: I apologize, Your Honor. She is --

7 THE COURT: She's like a new entry here, right?

8 MR. BLECHMAN: The summary -- a summary witness was
9 disclosed as a category in our trial witness list and then I
10 don't know how many weeks ago --

11 THE COURT: A draft pick to be named later, or what?

12 MR. BLECHMAN: At the start, yes, Your Honor, and
13 then several weeks ago, we identified her as the summary
14 witness and we disclosed that information to the Defendants.

15 THE COURT: Okay. Who is she and where's she from?

16 MR. BLECHMAN: She's from Philadelphia. She is at
17 an accounting firm. The name of the accounting firm is --

18 MR. PONZOLI: Friedman LLP.

19 MR. BLECHMAN: Sorry -- Friedman LLP and she is not
20 offering any opinions, Your Honor. The only thing she's doing
21 is she is serving as the vehicle, for lack of a better word,
22 and I apologize, through which we would introduce and offer
23 into evidence the summary exhibits and that's it. We would
24 expect that to be a relatively brief examination to simply lay
25 the foundation to have the summary exhibits admitted and

1 that's the extent of the examination, Your Honor.

2 THE COURT: So the extent of the examination would
3 not include this concept of being a certified fraud examiner?

4 MR. BLECHMAN: Correct, Your Honor.

5 THE COURT: No reference to that?

6 MR. BLECHMAN: Correct, Your Honor.

7 THE COURT: Correct, no reference?

8 MR. BLECHMAN: Correct, no reference, Your Honor.

9 THE COURT: Why can't you stipulate to the exhibit?
10 It may be a rhetorical question.

11 MR. KING: Well --

12 THE COURT: And then you can eliminate Ms. Flanagan
13 altogether.

14 MR. KING: Well, a couple of issues with respect to
15 the summaries which the Plaintiffs seek to introduce under
16 1006. Our review of them indicates to us that they really are
17 demonstratives. They're not 1006 summaries. They're intended
18 to persuade. They pick and choose. This isn't like -- these
19 aren't like summaries of cancelled checks or of invoices.
20 These are summaries that largely consist of timelines of each
21 of the alleged coconspirators that pick and choose various
22 pieces of evidence, United Voices, meeting minutes,
23 correspondence, e-mails, et cetera. There's a lot more
24 analysis in these summaries, analysis and, I think, argument
25 in these summaries than you would see in a typical 1006

1 summary. So that's our first concern as to why we would not
2 stipulate to them as true summaries.

3 THE COURT: Okay.

4 MR. KING: Second, insofar as Ms. Flanagan, who's an
5 outside consultant, who apparently was retained either on
6 September 12th or September 13th, insofar as she created these
7 and picking and choosing --

8 THE COURT: You want to cross-examine her on that.
9 I understand that.

10 MR. KING: I agree, but if she is -- I don't know
11 what criteria she's using, but if she's using any criteria
12 based on her experience, and I understand counsel doesn't
13 intend to refer to her as a certified fraud examiner, I think
14 we're crossing over -- we haven't examined her, but crossing
15 over a line of at least potential expert testimony here and
16 that was never disclosed.

17 THE COURT: Well, I take a very dim view of letting
18 this person who supposedly is only going to say, Yes, I drew
19 this exhibit, this timeline, by looking at the following 102
20 documents, period, end of story.

21 MR. KING: And, Your Honor --

22 THE COURT: Which is why I'm asking why not --

23 MR. KING: Lastly -- and, lastly, and we've asked
24 and so far they've accommodated, since Ms. Flanagan was
25 disclosed on September 27th, just a few weeks ago, we asked

1 counsel to please provide us with any communications and
2 drafts of the summaries and communications with Ms. Flanagan
3 or her firm. They've accommodated that in that they've given
4 us a lot of material through September 27th. We've asked them
5 to supplement that because just a couple of days ago, we
6 received revised versions of these summaries and we asked for
7 any communications, draft of these summaries from
8 September 27th to the time when they served this latest set.

9 We have deep concerns that these summaries actually
10 were created by counsel, not by the witness, and so that we're
11 happy to brief that, as well as the other objections that we
12 have.

13 THE COURT: What's the "that"?

14 MR. KING: That issue after we get -- after we get
15 all the information we've requested.

16 We're also happy to brief our objections to the
17 summaries as not true summaries, but really as demonstratives.

18 THE COURT: Okay. And has there been any discussion
19 about deposing this person?

20 MR. KING: There hasn't been. We already have one
21 person we have to depose and that's the person who took the
22 photographs and videos. We're really crunched and that's
23 why -- that's really one of the main -- we believe we are
24 prejudiced by virtue of the late disclosure of Ms. Flanagan
25 because it's just really not enough time for us to prepare for

1 trial and engage in --

2 THE COURT: Well, except what you'd be asking her
3 is, you know, who are you and how did you make this and did
4 the lawyers -- I mean, presumably from what you're suggesting,
5 did you hire and pick and choose what exhibits, where's the
6 footnotes, is there a legend to these exhibits, where are the
7 documents you pulled from it, and then you can at least
8 prepare and say, well, she did or didn't use the correct
9 underlying documents or she's going to say, Yeah, you caught
10 me, the Plaintiffs' lawyers gave this to me and asked me to
11 color it.

12 MR. KING: Your Honor, should the Court grant leave,
13 we'd be happy to depose her. We'd like to depose her --

14 THE COURT: My point is I don't think it should take
15 all that long.

16 MR. KING: Right. I also believe she's near the end
17 of their case presentation at least in terms of the order of
18 witnesses so -- and it could be after the flurry of activities
19 over the next ten days or so that we certainly would be able
20 to find time to depose her.

21 THE COURT: My concern really here is, Mr. Blechman,
22 that it's so easy to kind of drift into the notion of some
23 more substantive testimony than simply saying these are the
24 documents I got this data from, and here it is, and I decided
25 that it was better to have a lateral exhibit than a horizontal

1 exhibit. I just don't really don't want to see this person
2 become an undisclosed expert witness.

3 MR. BLECHMAN: Your Honor, we understand the Court's
4 concern. That has not been our intention from the start.

5 THE COURT: No, I know, but you know what she is
6 going to say.

7 MR. BLECHMAN: And I have some idea of what I think
8 she will say, Your Honor, and that has to do with simply the
9 creation of the documents and whatever other foundational-type
10 questions are necessary in connection with the creation of the
11 summary exhibits. And, that is, Your Honor, as I believe it
12 to be, sum and substance of where this goes. We don't intend
13 to ask her questions about whether she's looked at Rose
14 Acre's financial statements or whether she's done -- applied
15 her experience as a certified fraud examiner to look at any --

16 THE COURT: By the way, who certified her?

17 MR. BLECHMAN: I don't know the answer to that
18 question, Your Honor.

19 THE COURT: Okay.

20 MR. BLECHMAN: But I've answered the Court's
21 question directly about that, and if I might, so the starting
22 point for this is our effort to try to find ways to
23 streamline, to make the presentation more efficient for the
24 jury for the trial of the case, and so a summary witness using
25 summary exhibits becomes a very helpful mechanism by which to

1 do that.

2 I take issue with what Defense Counsel said in terms
3 of the description. There are, in fact, several -- there's --
4 I forget how many there are, Your Honor, there's several, but
5 a number of them are --

6 THE COURT: Several of exhibits.

7 MR. BLECHMAN: Several summary exhibits, excuse me.

8 One, for example, is, I think, a list of the members
9 of the various committees and Board of Directors and, in fact,
10 the Defendants have submitted something that is similar to
11 that in their summary exhibits.

12 Another one or two literally take copies of motions
13 that have been passed in board meetings and committee meetings
14 and simply puts that into a document reprinted verbatim with
15 the date that it occurs and the document control number that
16 you'll find in it.

17 Mechanisms to find ways to introduce into the record
18 information that we would otherwise have to introduce through
19 playing a number of depositions to establish the foundation
20 for getting documents into evidence. These are documents that
21 are admissible.

22 We understand the rules of the road on that, Your
23 Honor, but we've endeavored to think in terms of how we can
24 make this trial more efficient.

25 THE COURT: Do each of these summary exhibits have a

1 legend attached to them to say what the source of the
2 information portrayed on the summary exhibit --

3 MR. BLECHMAN: Yes, Your Honor.

4 THE COURT: Have the copies been shared of the
5 exhibits?

6 MR. BLECHMAN: I believe the answer's yes. The
7 answer's yes, Your Honor.

8 MR. PONZOLI: Yes, Your Honor.

9 MR. KING: Yes, Your Honor. Just briefly, I don't
10 want to belabor the point.

11 Mr. Blechman's correct, there are some documents,
12 some summaries that may -- that come closer to 1006, but those
13 are few.

14 The bulk of the summaries and the vast majority -- I
15 don't have the precise count, but it's around 20, maybe a
16 little bit more than that, are these chronologies.

17 THE COURT: 20 out of some other number or what?

18 MR. KING: There's 15 to 20 out of 23 or 4,
19 something like that. I don't know the precise number. But
20 80 percent of the summaries are these chronologies that focus
21 on various egg producers like Cal-Maine or Ohio Fresh,
22 Sparboe, Sauder. The source -- they do list the sources in
23 the chronology, but for the life of me, I don't know how they
24 can put on Ms. Flanagan to testify about these because she
25 isn't just simply --

1 THE COURT: It's not about them. All she can
2 testify is how she put them on a piece of paper.

3 MR. BLECHMAN: Right.

4 MR. KING: She put them on a piece of paper but
5 somebody had to select these things.

6 THE COURT: All right.

7 MR. KING: That required judgment picking and
8 choosing among disparate pieces of evidence. Again, this
9 isn't like assembling cancelled checks for --

10 THE COURT: Okay, let me ask a couple of questions.

11 First of all, is Mr. King correct that you
12 anticipate having Ms. Flanagan or whoever or however towards
13 the end of your case in chief?

14 MR. BLECHMAN: I don't know the answer to that
15 question, Your Honor, because depending upon sort of the pace,
16 I know the Court gets this better than all of us, depending on
17 the pace at which this goes, we may need to make some
18 decisions about putting Ms. Flanagan on earlier because the
19 witness isn't going to be available until next week, things of
20 that --

21 THE COURT: Ah, there's a little bit of a rub,
22 because where I am inclined to go on this --

23 MR. BLECHMAN: Well, if I can --

24 THE COURT: Yes.

25 MR. BLECHMAN: Oh --

1 THE COURT: You're actually making me more nervous
2 about things.

3 MR. BLECHMAN: No, I was going to make you feel -- I
4 was going to give the Court comfort. I just wanted to finish
5 the sentence -- is that we understand that we're disclosing
6 witnesses a good number of days in advance, and so our belief
7 is, my belief is, that she's testifying towards the end of our
8 case in chief. She will -- I expect that it would be before
9 the experts, before Dr. Baye who's the economist --

10 THE COURT: Well, presumably --

11 MR. BLECHMAN: -- before he testifies at the end.

12 THE COURT: Well, presumably, this is something --
13 well, I'm not going to imagine what you all are thinking, but
14 let me pose another question.

15 How is this different? How are these summaries
16 different than if, in the good old days, which I presume there
17 were, lawyers would create charts on thin butcher paper and
18 the easel and start saying, you know, they take a certain
19 piece of evidence that some witness said and they put it on
20 the easel and then we have all the great fun of people turning
21 the page of the easel. Why are these different from that
22 process? Because that process is permitted.

23 MR. KING: Right. Those are demonstratives. The
24 underlying evidence is being admitted. The issue here --

25 THE COURT: Okay.

1 MR. KING: -- under 1006 --

2 THE COURT: This is more the kind of an expert on
3 the weight of experts. I understand that.

4 MR. KING: Under 1006, these are the substitute for
5 the underlying material.

6 THE COURT: All right, I'll tell you what. I'd like
7 to see this collection of exhibits, the summaries that are
8 being proposed. I would like to see this person's CV. I want
9 you to recognize that if it's going to happen, it's going to
10 happen with a number of prefaces.

11 Number one, you'd better plan on the testimony being
12 a limitation of, This is how I color within the lines. This
13 is how I did it. I picked the crayons or the crayons were
14 given to me and I created this picture. And then it can only
15 happen if the Defense has at least five business days before
16 you plan on calling her to depose her -- plan on deposing her,
17 okay? That's what I'm thinking. I'm not going to rule yet
18 because I want to see these things before. Yes?

19 MS. SUMNER: Your Honor, if I can just ask a
20 clarifying question.

21 We agree with everything that Mr. King has said, but
22 want to emphasize our objection to these exhibits coming in
23 regardless of Ms. Flanagan and her ability to testify and
24 whether she stays within the narrow confines. We feel very
25 strongly that these are absolutely improper and will object to

1 them being admitted into evidence and would like the
2 opportunity to present that argument to the Court and I'm just
3 wondering when you would like us to do that.

4 THE COURT: Well, when am I going to get a copy of
5 the exhibits to look at?

6 MR. PONZOLI: We can provide a copy now, Your Honor,
7 and her CV.

8 THE COURT: Well, since I have the representation
9 that we're not going to use these in openings, for example.

10 MR. BLECHMAN: Correct, Your Honor.

11 THE COURT: We've got a little bit of time. So if
12 you can brief -- I'm going to get them now. I'm going to be
13 able to look at them whenever. Anybody who wants to submit
14 any kind of a short -- you don't have to give me the whole
15 lineup on this. By a week from tomorrow, would that work? So
16 this is, what, the first --

17 MS. SUMNER: That's fine, Your Honor.

18 THE COURT: So don't think you have to make the most
19 beautiful briefing on this. I want to know what's the basis
20 for that. I understand the prejudice. Sadly, there are ways
21 to handle the prejudice in terms of the deposition, in terms
22 of the very, very strict confines of what this person can talk
23 about, but I do want to see what the exhibits look like.

24 MR. BLECHMAN: Sure. Sure.

25 MS. SUMNER: Thank you.

1 MR. BLECHMAN: I had a question or two if I might?

2 THE COURT: Yes.

3 MR. BLECHMAN: But first of all, the Defendants, the
4 Court alluded to earlier, have proposed some summary exhibits
5 of their own. I'm not aware -- I could be mistaken, but I'm
6 not aware of their having identified a witness, a summary
7 witness through whom those exhibits are being introduced.
8 Perhaps they're planning to use somebody who has testified,
9 but if it's going to be someone that we don't know about yet,
10 we would like to know.

11 MR. KING: Your Honor, it won't be anyone.

12 THE COURT: Pardon me?

13 MR. KING: It won't be anyone who hasn't been
14 disclosed or identified.

15 MR. BLECHMAN: Then we'll play battleship and we'll
16 just wait and see.

17 MR. KING: I just would make a request. I did
18 ask -- I did mention that I asked for the additional materials
19 related to Ms. Flanagan's work since September 27th until when
20 she -- or when they served the latest set of summaries. We
21 will need those, obviously, in advance of any deposition and
22 Mr. Ponzoli has already indicated he would provide the
23 request.

24 MR. PONZOLI: Absolutely right.

25 THE COURT: Okay.

1 MR. BLECHMAN: And given our stated intention, Your
2 Honor, in terms of the limit and limitations with which we are
3 having this witness testify, I assume we should not and she
4 should not need to expect to have to be sitting for some very
5 lengthy depo going into all sorts of other things.

6 THE COURT: No, my expectation is it should be
7 pretty pointed.

8 MR. BLECHMAN: Thank you, Your Honor.

9 MR. KING: I'm likely to take the deposition and I'm
10 going to be very busy with trial. I don't anticipate wasting
11 anyone's time.

12 THE COURT: Okay, we've agreed. Nobody's going to
13 waste anybody's time.

14 MR. BLECHMAN: I'm sorry. With regard to the
15 Defendants' exhibits, I have two questions. One was who was
16 sponsoring them. The second was, as the Court alluded to
17 earlier, we have some issues with a number of their exhibits
18 and I'm wondering whether -- we'll file something with Your
19 Honor. You asked for objections. We'll file written
20 objections and we can hand in documents as need be and so
21 forth.

22 THE COURT: So I'll tell you what, folks. I'm going
23 to get the whole collection, the bouquet of the Plaintiffs'
24 exhibits, but if you've got objections to certain Defense
25 summaries that you already know, staple them to what your

1 objections are, okay?

2 MR. BLECHMAN: Thank you, Your Honor. That was my
3 question.

4 THE COURT: Because that's just easier for us to
5 manage it this way.

6 MR. BLECHMAN: Sure.

7 THE COURT: Okay. Stipulations. There's some
8 issues about stipulations now. Somebody is asking the Court
9 to take judicial notice of something, of some of the statutes,
10 I guess, right?

11 MS. LEVINE: Yes. Your Honor, we actually think
12 it's a little silly that we have to ask the Court for that
13 because we would have assumed that Plaintiff would have
14 stipulated as uncontested facts an enacted statute that the
15 Court has already ruled on a motion in limine and allowed in
16 the DPP trial, but, for some reason, we have a hard time
17 getting agreement on that. So we would like it just to be as
18 an uncontested fact. I myself sent these over to Plaintiffs,
19 the whole statute underlined, what we'd like to use on a
20 billboard or in our case, and we're sorry that we have to
21 bring this --

22 THE COURT: I don't even know that you really have a
23 matter in dispute on this. I mean, judicial notice is such an
24 unattractive avenue to follow. But, sure, I'll take judicial
25 notice of the date of passage, effective date of a statute,

C E R T I F I C A T E

I certify that the foregoing is a correct transcript
from the record of the proceedings in the above-entitled matter.

DATE: Kathleen Feldman, CSR, CRR, RPR, CM
Official Court Reporter